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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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November 16, 2001

By Hand

Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 3-C252
Washington D.C., 20554

Kathryn O'Brien, Acting Chief
Telecommunications Division
International Bureau
Federal Communications Commission
445 Twelfth Street, SW
Room 6-A764
Washington D.C., 20554

Re: CC Docket No. 00-206

No. of Copies rec'd 041
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Dear Mr. Sugrue and Ms. O'Brien:

On January 17, 2001, the Commission issued a Memorandum Opinion and Order approving the transfer of FCC licenses and authorizations held by Intermedia Communications, Inc. (Intermedia) to WorldCom, Inc. (WorldCom).¹ The Commission's approval of those transfers was conditioned on "the merged entity's divestiture of Intermedia's assets in accordance with the Department of Justice Proposed Final Judgment and the Proposed Hold Separate Stipulation and Order referred to herein."² This letter is to advise you that on August 28, 2001 the Department of Justice, WorldCom and Intermedia filed a Joint Motion to Modify the Hold Separate Stipulation and Order cited in the Commission's *January 17 Order*.³ The Court subsequently entered an order

¹ See *In re Applications of Intermedia Communications, Inc., Transferor, and WorldCom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 21, 63, 90, and 101*, Memorandum Opinion and Order (DA 01-130), CC Docket No. 00-206 (Com. Carr. Bur., Int'l Bur., Wireless Tel. Bur., Jan. 17, 2001) (*January 17 Order*).

² See *id.* at para. 18.

³ The parties advised the Commission of this development in a letter to the Common Carrier Bureau, but inadvertently failed to specifically address the letter to the International Bureau or the Wireless

granting the parties' motion. The Joint Motion and accompanying attachments, as filed with the Court, are enclosed herewith. The revisions to the Hold Separate Order (HSO) do not require any changes to the Final Judgment. As discussed below, because the modifications to the HSO are modest and are intended to ensure that the purpose and intention of the Final Judgment are accomplished in a timely fashion, WorldCom and Intermedia believe that this development does not require any action by the Commission.

As explained in the Joint Motion, the competitive concern identified by the Department of Justice in its review of the WorldCom/Intermedia transaction was its potential effect on the competitive provision of Internet backbone and access services. Although Intermedia and WorldCom disagreed with the Department's competitive assessment, they agreed that the merged entity would divest all of Intermedia except for its holdings of capital stock in Digex, Inc. A proposed Final Judgment and HSO were filed with the Court on November 17, 2000 and the HSO was entered on May 30, 2001. The Final Judgment was entered on June 27, 2001, and WorldCom and Intermedia closed the transaction on July 1, 2001.

The HSO, among other things, required WorldCom to hold separate all of the Intermedia assets (excluding the Digex stock) and obligated Intermedia during the HSO period to continue to operate its business according to the business plan adopted in 1999, when conditions in the telecommunications industry were markedly different than they are today. These restrictions have impeded WorldCom's ability to divest Intermedia's Internet backbone and access business (*i.e.*, its stand-alone business unit, IBI) because they required potential purchasers also to acquire Intermedia's competitive local exchange carrier (LEC) business and prevented Intermedia's management from revising the company's business plan in a manner that would permit them to put IBI on a path to profitability.

The unprecedented downturn in the telecommunications industry since the fourth quarter of 2000 has been well-documented. Since WorldCom agreed to divest Intermedia's assets, at least 14 telecommunications carriers have filed for bankruptcy.⁴ As a result, a surfeit of competitive LEC businesses and assets have become available at distressed prices. Further, many remaining competitors, the most likely purchasers of Intermedia's assets, have been forced by the scarcity of new capital to restructure or substantially downsize their operations. Consequently, although Intermedia's IBI business unit remains an attractive asset, WorldCom's efforts to divest that unit have been hampered by potential purchasers' lack of interest in Intermedia's competitive LEC assets. In addition, the HSO's requirement that Intermedia continue to operate its IBI unit according to an obsolete business plan precludes its management from revising its operations to take account of the dramatic changes in the industry.

Telecommunications Bureau. See Letter from A. Richard Metzger, Jr. to Michelle Carey, Chief, Policy and Program Planning Division, Common Carrier Bureau, CC Dkt No. 00-206 (August 31, 2001).

⁴ These firms include American Metrocomm, NETtel, ICG, NorthPoint, Rhythms NetConnections, e.spire, Teligent, Winstar, Advanced Radio Telecom, 360networks, PSINet, Convergent, World Access and Metricom.

In light of these developments, the Department, WorldCom and Intermedia proposed three principal modifications to the HSO:

- 1) to limit the assets to be held separate to Intermedia's stand-alone IBI business unit;
- 2) to appoint a trustee, selected by the Department of Justice and approved by the Court, to hold separate and manage IBI;⁵ and
- 3) to provide the trustee with sufficient flexibility to operate IBI rationally under today's marketplace conditions, in order to improve the unit's profitability and, as a result, its marketability.

As the Joint Motion emphasizes:

The proposal in no way derogates from the fundamental purpose and intent of either the Final Judgment or the HSO. The modifications are expressly designed to improve the chances for accomplishing the divestiture of a viable and going Internet business to an acceptable purchaser.⁶

Each of the changes to the HSO is clearly intended to enhance the prospects for achieving this overriding objective. Limiting the HSO to the IBI assets, employees, revenue and customer base will enable that unit to continue to operate independently, under the supervision of the independent trustee and to remain a separate, viable, competitive entity until it is divested. As the Department acknowledged in the Joint Motion, "[t]he divestiture of IBI as a stand-alone business will resolve any competitive issues in the provision of Internet backbone and access services, the affected market alleged by the United States...." Similarly, the selection of an independent trustee, in concert with the changes to the HSO to permit IBI to implement a revised business plan, is intended to provide further assurance that IBI will be operated in a manner that will enhance its commercial viability and attractiveness to potential purchasers.

As the foregoing discussion shows, under the modified HSO WorldCom remains obligated to hold separate the Intermedia assets that were the sole source of allegations that WorldCom's acquisition of Intermedia raised competitive concerns.⁷ The only change is the manner in which the hold separate requirement will be carried out. No party in the FCC proceeding claimed that WorldCom's acquisition of Intermedia's *de minimis* competitive LEC assets, wireless licenses or international authorizations could

⁵ The use of the term "trustee" in the instant context should not be confused with an FCC "trust" that is sometimes used in merger and acquisitions cases as a legal entity to hold licenses pending their transfer to another party. In the instant case, the term simply signifies that an independent business manager will be appointed by the Department of Justice (and approved by the Court) to run the IBI business unit, consistent with the terms of the modified HSO. No separate legal entity is being created. Moreover, the IBI business unit's assets do not include any FCC licenses or authorizations.

⁶ Joint Motion at 4.

⁷ See *January 17 Order* at paras. 9-10.

have anticompetitive effects. Moreover, WorldCom and Intermedia will remain obligated to operate in compliance with the HSO and Final Judgment, as required by the Commission's ordering clauses in the *January 17 Order*. Indeed, it bears emphasis that the Final Judgment already authorizes the Department of Justice to approve the divestiture of less than all of Intermedia's assets. Consequently, even if the HSO had not been amended, WorldCom could have proposed and the Department of Justice could have consented to a divestiture limited to Intermedia's IBI unit. For that reason, no changes have been made to the Final Judgment.

The *January 17 Order* authorized the transfer of a domestic blanket section 214 authorization, certain fixed wireless licenses (mostly for microwave service, and one multipoint distribution service), a private radio license and international section 214 authorizations. As the parties explained in their initial application,⁸ and reiterated in a letter to the Common Carrier Bureau,⁹ the combination of WorldCom and Intermedia will not impair competition in either the long distance or local telecommunications businesses. The modifications to the HSO approved by the Court do not alter this conclusion. Nor do the modifications to the HSO affect competition for wireless or international services.¹⁰

⁸ See Applications of Intermedia Communications, Inc. and WorldCom, Inc. for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 21, 63, 90, and 101, at 7-16 (Oct. 23, 2000) (*Application*).

⁹ See Letter from A. Richard Metzger, Jr. to Michelle Carey, Chief, Policy and Program Planning Division, Common Carrier Bureau, CC Dkt No. 00-206 (Sept. 12, 2001) (responding to an informal request for information).

¹⁰ As the companies explained in their original application, a combination of WorldCom's and Intermedia's assets would have no adverse effect on competition for wireless or international services. See *Application* at 8, n. 7 (noting that Intermedia provides international services exclusively on a pure resale basis, and accounts for less than 0.6% of industry international message telephone service resale revenues); see also *January 17 Order* at paras. 12-13 (finding no basis to conclude that the transfer of control of the wireless licenses would result in anti-competitive effects or that the proposed merger would have anti-competitive effects in any U.S. international services market).

Mr. Sugrue and Ms. O'Brien
November 16, 2001
Page 5

In sum, WorldCom and Intermedia submit that the modifications to the HSO governing WorldCom's management of Intermedia do not require any changes to the Commission's *January 17 Order* in this proceeding. In the event that Commission has any questions regarding these developments, please contact the undersigned.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Ruth Milkman", with a stylized, cursive script.

Ruth Milkman

Attorney for WorldCom, Inc.

Enclosures

cc: Magalie R. Salas, Secretary
Michelle Carey
Claudia Fox
David Krech
George Li
Zenji Nakazawa
Susan O'Connell
Brian O'Donnell
Barry Ohlson
D'wana Terry
Henry Thaggert
Jeffrey Tobias

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August 31, 2001

By Hand

Michelle Carey, Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington D.C., 20554

Re: CC Docket No. 00-26

Dear Ms. Carey:

On January 17, 2001, the Commission issued a Memorandum Opinion and Order approving the transfer of FCC licenses and authorizations held by Intermedia Communications, Inc. ("Intermedia") to WorldCom, Inc. ("WorldCom").¹ The Commission's approval of those transfers was conditioned on "the merged entity's divestiture of Intermedia's assets in accordance with the Department of Justice Proposed Final Judgment and the Proposed Hold Separate Stipulation and Order referred to herein."² This letter is to advise you that on August 28, 2001 the Department of Justice, WorldCom and Intermedia filed a Joint Motion to Modify the Hold Separate Stipulation and Order cited in the Commission's January 17 Order. The Court subsequently entered an order granting the parties' motion. The Joint Motion and accompanying attachments, as filed with the Court, are enclosed herewith. The revisions to the Hold Separate Order (HSO) do not require any changes to the Final Judgment. As discussed below, because the modifications to the HSO are modest and are intended to ensure that the purpose and intention of the Final Judgment are accomplished in a timely fashion, WorldCom and Intermedia believe that this development does not require any action by the Commission.

¹ See *In re Applications of Intermedia Communications, Inc., Transferor, and WorldCom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 21, 63, 90, and 101, Memorandum Opinion and Order (DA 01-130), CC Docket No. 00-26 (Com. Carr. Bur., Int'l Bur., Wireless Tel. Bur., Jan. 17, 2001) (January 17 Order).*

² See *id.* at para. 18.

As explained in the Joint Motion, the competitive concern identified by the Department of Justice in its review of the WorldCom/Intermedia transaction was its potential effect on the competitive provision of Internet backbone and access services. Although Intermedia and WorldCom disagreed with the Department's competitive assessment, they agreed that the merged entity would divest all of Intermedia except for its holdings of capital stock in Digex, Inc. A proposed Final Judgment and HSO were filed with the Court on November 17, 2000 and the HSO was entered on May 30, 2001. The Final Judgment was entered on June 27, 2001, and WorldCom and Intermedia closed the transaction on July 1, 2001.

The HSO, among other things, required WorldCom to hold separate all of the Intermedia assets (excluding the Digex stock) and obligated Intermedia during the HSO period to continue to operate its business according to the business plan adopted in 1999, when conditions in the telecommunications industry were markedly different than they are today. These restrictions have impeded WorldCom's ability to divest Intermedia's Internet backbone and access business (*i.e.*, its IBI stand-alone business unit) because they required potential purchasers also to acquire Intermedia's competitive local exchange carrier (LEC) business and prevented Intermedia's management from revising the company's business plan in a manner that would permit them to put IBI on a path to profitability.

The unprecedented downturn in the telecommunications industry since the fourth quarter of 2000 has been well-documented. Since WorldCom agreed to divest Intermedia's assets, at least 14 telecommunications carriers have filed for bankruptcy.³ As a result, a surfeit of competitive LEC businesses and assets have become available at distressed prices. Further, many remaining competitors, the most likely purchasers of Intermedia's assets, have been forced by the scarcity of new capital to restructure or substantially downsize their operations. Consequently, although Intermedia's IBI business unit remains an attractive asset, WorldCom's efforts to divest that unit have been hampered by potential purchasers' lack of interest in Intermedia's competitive LEC assets. In addition, the HSO's requirement that Intermedia continue to operate its IBI unit according to an obsolete business plan precludes its management from revising its operations to take account of the dramatic changes in the industry.

In light of these developments, the Department, WorldCom and Intermedia proposed three principal modifications to the HSO:

- 1) to limit the assets to be held separate to Intermedia's stand-alone IBI business unit;

³ These firms include American Metrocomm, NETtel, ICG, NorthPoint, Rhythms NetConnections, e.spire, Teligent, Winstar, Advanced Radio Telecom, 360networks, PSINet, Convergent, World Access and Metricom.

- 2) to appoint a trustee, selected by the Department of Justice and approved by the Court, to hold separate and manage IBI;⁴ and
- 3) to provide the trustee with sufficient flexibility to operate IBI rationally under today's marketplace conditions, in order to improve the unit's profitability and, as a result, its marketability.

As the Joint Motion emphasizes:

The proposal in no way derogates from the fundamental purpose and intent of either the Final Judgment or the HSO. The modifications are expressly designed to improve the chances for accomplishing the divestiture of a viable and going Internet business to an acceptable purchaser.⁵

Each of the changes to the HSO is clearly intended to enhance the prospects for achieving this overriding objective. Limiting the HSO to the IBI assets, employees, revenue and customer base will enable that unit to continue to operate independently, under the supervision of the independent trustee and to remain a separate, viable, competitive entity until it is divested. As the Department acknowledged in the Joint Motion, "[t]he divestiture of IBI as a stand-alone business will resolve any competitive issues in the provision of Internet backbone and access services, the affected market alleged by the United States...." Similarly, the selection of an independent trustee, in concert with the changes to the HSO to permit IBI to implement a revised business plan, is intended to provide further assurance that IBI will be operated in a manner that will enhance its commercial viability and attractiveness to potential purchasers.

As the foregoing discussion shows, WorldCom under the modified HSO remains under an obligation to hold separate the Intermedia assets that were the sole source of allegations that WorldCom's acquisition of Intermedia raised competitive concerns.⁶ The only change is the manner in which the hold separate requirement will be carried out. No party in the FCC proceeding claimed that WorldCom's acquisition of Intermedia's *de minimis* competitive LEC assets could have anticompetitive effects. Moreover, WorldCom and Intermedia will remain obligated to operate in compliance with the HSO and Final Judgment, as required by the Commission's ordering clauses in the *January 17 Order*. Indeed, it bears emphasis that Final Judgment already authorizes the Department of Justice to approve the divestiture of less than all of Intermedia's assets. Consequently, even if the HSO had not been amended, WorldCom could have proposed and the

⁴ The use of the term "trustee" in the instant context should not be confused with an FCC "trust" that is sometimes used in merger and acquisitions cases as a legal entity to hold licenses pending their transfer to another party. In the instant case, the term simply signifies that an independent business manager will be appointed by the Department of Justice (and approved by the Court) to run the IBI business unit, consistent with the terms of the modified HSO. No separate legal entity is being created. Moreover, the IBI business unit in any event does not include among its assets FCC licenses or authorizations.

⁵ Joint Motion at 4.

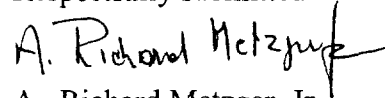
⁶ See *January 17 Order* at paras. 9-10.

Michelle Carey, Chief
August 31, 2001
Page 4 of 4

Department of Justice could have consented to a divestiture limited to Intermedia's IBI unit. For that reason, no changes have been made to the Final Judgment.

In sum, WorldCom and Intermedia submit that the modifications to the HSO governing WorldCom's management of Intermedia do not require any changes to the Commission's *January 17 Order* in this proceeding. In the event that Commission has any questions regarding these developments, please contact the undersigned.

Respectfully submitted

A handwritten signature in black ink, appearing to read "A. Richard Metzger, Jr.", with a stylized flourish at the end.

A. Richard Metzger, Jr.
Ruth Milkman

Attorneys for WorldCom, Inc.

Enclosure

cc: Magalie R. Salas, Secretary (w/enclosures)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

WORLDCOM, INC.,
INTERMEDIA COMMUNICATIONS, INC.,
Defendant.

Civil Case No. 1:00CV02789(RWR)

**JOINT MOTION TO MODIFY
HOLD SEPARATE STIPULATION AND ORDER**

Through undersigned counsel, the parties to the above-captioned action move for modification of the Hold Separate Stipulation and Order entered by this Court on May 30, 2001, in connection with WorldCom's acquisition of Intermedia Communications, Inc. The reasons for this motion are set forth in the accompanying Memorandum in Support of the Joint Motion to Modify Hold Separate Stipulation and Order.

Dated: August 29, 2001

Respectfully submitted,

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UNITED STATES OF AMERICA,
Plaintiff,

v.

WORLD.COM, INC.,
INTERMEDIA COMMUNICATIONS, INC.,
Defendants.

Through undersigned counsel, the parties to this action move for modification of the Hold Separate Stipulation and Order (“HSO”) entered by this Court on May 30, 2001, in connection with WorldCom’s acquisition of Intermedia Communications, Inc. (“Intermedia”). Specifically, the parties propose three principal modifications to the HSO:

- 1

today's market conditions, in order to improve the profitability and, therefore, the marketability of IBI.

This request to modify the HSO is proposed for the purpose of enhancing the prospect of a rapid and successful divestiture of the IBI business as a viable competitor. The proposed modifications are limited and do not interfere with the remediation of the competitive concern identified in the United States' complaint -- namely, the preservation of competition in the provision of Internet backbone and access services. The requested modifications are necessitated by unforeseen and substantial changes in the telecommunications marketplace which the parties reasonably could not have anticipated when they agreed to the HSO. At the same time, the modifications sought are modest ones which, in no way, undermine the core principle of maintaining and ultimately divesting a separate and viable IBI business. The proposed modifications are designed to help ensure that the purpose and intention of the Final Judgment are effectuated on a timely basis.

I. BACKGROUND

WorldCom executed a definitive agreement to acquire Intermedia on September 5, 2000. In response to concerns raised by the United States regarding the transaction's effect on the competitive provision of Internet backbone and access services, WorldCom and Intermedia agreed to divest all of Intermedia except for its holdings of capital stock in Digex, Inc. ("Digex"). A proposed Final Judgment and HSO were filed with the Court on November 17, 2000, and the HSO was entered on May 30, 2001. The Final Judgment was entered on June 27, 2001, and WorldCom and Intermedia closed the transaction a few days later, on July 1, 2001.

In relevant part, the HSO requires WorldCom to hold separate all of the Intermedia

Assets and binds Intermedia during the HSO period to continue to operate its business according to the business plan put in place in 1999, when conditions in the telecommunications marketplace were markedly different than they are today. These restrictions have impeded WorldCom's ability to divest the IBI business by tying it to Intermedia's competitive local exchange carrier ("CLEC") business and by preventing Intermedia's management from attempting to put IBI on a path to profitability.¹

Growth in telecommunications services markets has slowed dramatically since the fourth quarter of 2000. Significant capital investments made by competitive telecommunications carriers in anticipation of future growth have proved difficult to pay for when the projected revenues were not achieved. Since WorldCom agreed to divest the Intermedia assets, no fewer than 14 competitive providers have filed for bankruptcy,² resulting in a glut of carrier businesses and assets becoming available at distressed prices. Many remaining competitors have been forced to restructure or substantially downsize their operations.

While Intermedia's Internet backbone business remains an attractive asset, efforts to divest the business have been hampered by both the lack of interest by buyers in the non-Internet Intermedia assets and the need to revise the IBI business plans and operations in light of current market conditions.

¹ The Final Judgment requires WorldCom to divest the "Intermedia Assets," as defined therein within 180 calendar days from the closing of the merger. Although the Final Judgment defines "Intermedia Assets" broadly to include all of Intermedia's assets except the Digex stock, it expressly anticipates that less than all of Intermedia's assets actually might be appropriate or necessary to divest in order to effectuate the desired relief, in that it permits a smaller subset of the assets to be sold if the United States consents in writing. Final Judgment, IV.G. This proposal accordingly does not require any modification to the Final Judgment.

² These companies include American Metrocomm, NETtel, ICG, Northpoint, Rhythms NetConnections, e.spire, Teligent, Winstar, Advanced Radio Telecom, 360networks, PSINet, Convergent, World Access, and Metricom.

II. PROPOSED CHANGES TO THE HOLD SEPARATE ORDER

The parties propose to address the marketability problems encountered thus far by untethering IBI from Intermedia's non-Internet assets and providing the flexibility to alter IBI's operations in such a way as to make it a more viable and marketable business in today's environment. The proposal in no way derogates from the fundamental purpose and intent of either the Final Judgment or the HSO. The modifications are expressly designed to improve the chances for accomplishing the divestiture of a viable and ongoing Internet business to an acceptable purchaser. The trustee will insure that IBI would remain fully separate from the operations and influence of WorldCom, as currently provided in the HSO, and any business changes would be made by the trustee, in consultation with IBI's current independent management.

A. Limit the Scope of the Hold Separate Order to IBI

Under the Final Judgment, defendants are obligated to divest all the non-Digex portions of Intermedia, although with the written consent of the United States, defendants would be permitted to divest something less than this. The United States anticipates consenting to defendants' request to divest only the IBI assets, because the divestiture of IBI alone appears to be sufficient to remedy the harm alleged in the Complaint, and the unsuccessful efforts to divest the Intermedia Assets indicate that the divestiture of IBI is being hindered, rather than aided, by the requirement that other business units besides IBI be divested. Accordingly, there is no longer any need for other business units besides IBI to be covered by the HSO.

The proposed revised HSO is limited in scope to IBI. The IBI assets, employees, revenue, and customer base would continue to be held separately from WorldCom. IBI would

continue to operate independently, with management under the supervision and control of the trustee, without any control by or direction from WorldCom. The divestiture of IBI as a stand-alone business will resolve any competitive issues in the provision of Internet backbone and access services, the affected market alleged by the United States, and the HSO is geared to ensuring that IBI remains a separate, viable, competitive entity until the divestiture is accomplished.

B. Appoint an Independent Trustee to Manage the IBI Business

As discussed further below, certain business decisions regarding IBI need to be taken in order to enhance the prospects of a successful divestiture. Rather than commit these decisions to employees of defendants, the proposed revised HSO contemplates the selection of an impartial, independent trustee by the United States, and his or her appointment by the Court. The trustee will be tasked with carrying out the purposes of the Final Judgment, and given necessary and appropriate powers to do so. The fact that this trustee is independent, selected by the United States, and approved by this Court helps guarantee that IBI will be operated in a manner best calculated to enhance its viability and attractiveness to potential purchasers.

C. Give the Trustee Sufficient Flexibility to Manage IBI Rationally

In addition, the parties request that the HSO be modified to enable the independent trustee to undertake rational business measures to make IBI a viable business. The HSO currently requires WorldCom to cause IBI to maintain at 2000 levels or previously approved levels for 2001, whichever are higher, all promotional, advertising, sales, technical assistance, network capacity configurations and expansions, marketing and merchandising support for the Intermedia Assets. Hold Separate Stipulation and Order V.A.2. It also requires WorldCom to

cause IBI to maintain “projected capacity expansions . . . planned prior to negotiations between defendants relating to the Merger. . . .” Hold Separate Stipulation and Order V.B.5, and prohibits the termination of any Intermedia employee during the pendency of the HSO. Hold Separate Stipulation and Order V.B.9. Because of these restrictions, Intermedia’s management has been unable to undertake appropriate measures to reduce costs or otherwise respond to conditions in the telecommunications/CLEC marketplace. However, to operate an Internet business today as though the market is as was expected and hoped in 1999 and 2000 is not only irrational, but makes it more difficult to package IBI as a desirable business to prospective purchasers.

To enable WorldCom to promptly divest IBI, the parties urge the Court to amend the HSO in the following ways:

- As provided in Section V of the Proposed Modified Hold Separate Stipulation and Order, the United States will select an independent Hold Separate Trustee to serve as manager of the IBI business from the time of his or her appointment until the IBI business is sold. Working with IBI’s existing management team, the Trustee will have the responsibility, and flexibility, to ensure that IBI is managed so as to maximize its revenue and cash flow so as to permit its expeditious divestiture in a manner consistent with the Final Judgment. It will monitor the organization of the IBI business; control and operate the IBI business to ensure as much as possible that it is an ongoing, economically viable competitor in the provision of Internet backbone and access services; maintain the independence of the IBI business from WorldCom; manage the IBI business in order to maximize its value and effect its expeditious divestiture in a manner consistent with the Final Judgment; and assure the defendants’ compliance with their obligations pursuant to the Modified HSO. See Para. V.C.2. of the Proposed Modified Hold Separate Stipulation and Order.

- As provided in Section VI of the Proposed Modified Hold Separate Stipulation and Order, defendants shall offer to provide IBI with certain services and products currently provided by Intermedia to the IBI business which are not included within the IBI business, such as human resources administrative services, preparation of tax returns, and the like.

A full copy of the Proposed Modified Hold Separate Stipulation and Order is attached to this Memorandum, in both a clean form and a form marked to show differences between the original and proposed modified order. Attachment A is the clean version, and Attachment B is the version marked to show differences.

III. MODIFYING THE HOLD SEPARATE ORDER IS IN THE PUBLIC INTEREST

The central purpose of the HSO, to ensure that the divestiture assets remain “an independent, ongoing, economically viable competitive business,” is served by the proposed modifications and, therefore, is in the public interest.

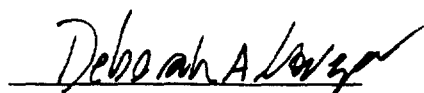
For the foregoing reasons, the parties respectfully request that this Court grant this Joint Motion to Modify Hold Separate Stipulation and Order entered in this action on May 30, 2001.

Dated: August 29, 2001

Respectfully submitted,

Parker Erkman
 Hillary Burchuk, Trial Attorney
 (DC Bar #366755)
 J. Parker Erkman, Trial Attorney
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Counsel for Intermedia Communications, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

WORLDCOM, INC.,
INTERMEDIA COMMUNICATIONS, INC.
Defendants.

Case No. 1:00CV02789 (RWR)

MODIFIED HOLD SEPARATE STIPULATION AND ORDER

This matter came before the Court on the parties' Joint Motion to Modify Hold Separate Stipulation and Order. This Court, having considered the Motion and the memorandum in support thereof and being fully advised of its premise, hereby grants this Motion and modifies the Hold Separate Stipulation and Order, entered on May 30, 2001. It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Hold Separate Stipulation and Order:

A. "Acquirer" means the entity to whom defendants divest the IBI business.

B. "WorldCom" means defendant WorldCom, Inc., a Georgia corporation with its headquarters in Clinton, Mississippi, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents

and employees.

C. "Intermedia" means defendant Intermedia Communications, Inc., a Delaware Corporation with its headquarters in Tampa, Florida, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents and employees.

D. "Intermedia Business Internet" or "IBI business" means Intermedia's Internet backbone and access services business and includes:

1. All tangible assets that comprise Intermedia's Internet backbone and access services business, including research and development activities, all networking equipment and fixed assets, personal property, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with the IBI business; all licenses, permits and authorizations issued by any governmental organization relating to the IBI business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the IBI business, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the IBI business;

2. All intangible assets used in the development, production, servicing and sale of the IBI business, including, but not limited to all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade

secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to the IBI business, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the IBI business, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure the prompt divestiture of Intermedia's assets for the purpose of preserving a viable competitor in the provision of Internet backbone and access services and to remedy the effects that the United States alleges would otherwise result from WorldCom's acquisition of Intermedia. The parties believe this goal can be best accomplished through this modification to the original Hold Separate Stipulation and Order. This Modified Hold Separate Stipulation and Order ensures, prior to such divestiture, that the IBI business remains an economically viable, and ongoing business concern that will remain independent and uninfluenced by WorldCom, and that competition is maintained during the pendency of the ordered divestiture .

III. JURISDICTION AND VENUE

This Court has jurisdiction over each of the parties hereto and over the subject matter of

this action, and venue of this action is proper in the United States District Court for the District of Columbia. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

IV. COMPLIANCE WITH THE FINAL JUDGMENT

A. Defendants shall continue to abide by and comply with the provisions of the Final Judgment, entered in this matter on June 27, 2001.

B. Defendants shall not take any steps in contravention of the original Hold Separate Stipulation and Order before the Court has entered this Modified Hold Separate Stipulation and Order.

C. This Modified Hold Separate Stipulation and Order shall apply with equal force and effect to any amended Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. Defendants represent that the divestiture ordered in the Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

E. The United States and defendants WorldCom and Intermedia, by their respective attorneys, have consented to the entry of this Modified Hold Separate Stipulation and Order without trial or adjudication of any issue of fact or law, and without this Modified Hold Separate Stipulation and Order constituting any evidence against or admission by any party regarding any issue of fact or law.

V. APPOINTMENT OF HOLD SEPARATE TRUSTEE

The United States will select and the Court will approve and appoint a Hold Separate Trustee to serve as manager of the IBI business from the time of his or her appointment until the IBI business is sold. This Modified Hold Separate Stipulation and Order shall not be interpreted to prevent the Hold Separate Trustee from becoming the divestiture trustee pursuant to Section V of the Final Judgment.

A. As soon as practicable, the United States will identify to defendants the individual or entity it proposes to select as the Hold Separate Trustee. Defendants shall not object to the selection of the trustee on any grounds other than irremediable conflict of interest. Defendants must make any such objection within five (5) business days after plaintiff notifies defendants of the trustee's selection. Upon application of the United States, the Court shall approve and appoint a Hold Separate Trustee to manage the IBI business in anticipation of an expeditious sale of the IBI business.

B. Promptly after the appointment of the Hold Separate Trustee by the Court, defendants shall enter into a trustee agreement with the Hold Separate Trustee subject to the approval of the United States that will grant the rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his or her duties and responsibilities, pursuant to this Modified Hold Separate Stipulation and Order. The trustee agreement shall require the following:

1. The Hold Separate Trustee shall serve, without bond or other security, at the cost and expense of defendants, on such terms and conditions as the United States approves

with a fee arrangement that is reasonable in light of the person's experience and responsibilities;

2. The defendants shall indemnify the Hold Separate Trustee and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee;

3. When the United States approves the trustee agreement, the Hold Separate Trustee will assume all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his or her duties and responsibilities, pursuant to this Modified Hold Separate Stipulation and Order and consistent with the purposes of the Final Judgment;

4. The Hold Separate Trustee will assume the powers and responsibilities listed in Section V.C of this Modified Hold Separate Stipulation and Order;

5. Limitations shall be placed on the powers of the Hold Separate Trustee pursuant to Section V.D of this Modified Hold Separate Stipulation and Order.

C. The Hold Separate Trustee will have the following powers and responsibilities with respect to the IBI business:

1. Thirty (30) days after the Hold Separate Trustee has been approved by the Court, and every thirty (30) days thereafter until the termination of this order, the Hold Separate Trustee shall report in writing to the United States concerning the efforts to accomplish the